PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: **12-O-15516-YDR**
	)	12-O-15734
CHANCE EDWARD GORDON,	)	
	)	**DECISION AND ORDER OF**
Member No. 198512,	)	**INVOLUNTARY INACTIVE**
	)	**ENROLLMENT**
A Member of the State Bar.	)	

Introduction[1]

In this contested disciplinary proceeding, Chance Edward Gordon (Respondent) is charged with misconduct stemming from his nationwide loan modification service. Due to the scope and complexity of the charges, the notices of disciplinary charges against Respondent were divided into phases. The present matter represents "phase one" and involves only the above-titled case numbers. This matter consists of six counts of misconduct, including entering into a partnership with a non-attorney; splitting fees with non-attorneys; false advertising; failing to comply with all laws; and committing acts involving moral turpitude.

This court finds, by clear and convincing evidence, that Respondent is culpable of the charged misconduct in phase one. Based on the serious nature and extent of culpability, as well as the extensive aggravation and limited mitigation, the court recommends that Respondent be disbarred.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

On September 21, 2012, the Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case Nos. 10-O-05509 (10-O-06222; 11-O-11993; 11-O-18827; 12-O-10074; 12-O-10539; 12-O-10634; 12-O-10940; 12-O-11881; 12-O-12061; 12-O-12422; 12-O-13166; 12-O-13268) (First NDC). Respondent filed a response to the First NDC on November 26, 2012.

On December 20, 2012, the OCTC filed a second NDC in case Nos. 12-O-14013 (12-O-14058; 12-O-14793; 12-O-15084; 12-O-15403; 12-O-15433; 12-O-15516; 12-O-15734; 12-O-15826; 12-O-15947; 12-O-16102; 12-O-16234; 12-O-16512; 12-O-16537) (Second NDC). Respondent filed a response to the Second NDC on January 31, 2013.

These cases were originally assigned to State Bar Court Judge Richard A. Platel. On January 15, 2013, Respondent filed a motion to disqualify Judge Platel. The Supervising Judge of the State Bar Court Hearing Department assigned another judge to hear the disqualification motion. On January 18, 2013, the motion to disqualify was denied, no good cause having been found.

On February 4, 2013, the court issued an order consolidating the First NDC with the Second NDC. On April 2, 2013, the OCTC filed an amended version of the First NDC (Amended First NDC). Respondent filed a response to the Amended First NDC on May 7, 2013.

On June 5, 2013, Respondent filed a motion to continue or stay the present proceeding. Among other things, Respondent requested that the matter be abated until the resolution of his federal matter entitled *Consumer Financial Protection Bureau v. Chance Edward Gordon, et al.*,

United States District Court, Central District of California.[2] The OCTC did not oppose the request for abatement. On June 6, 2013, Judge Platel issued an order granting the abatement.

Seventeen months later, on November 6, 2014, this matter was reassigned to the undersigned judge. This matter remained in abatement for another eighteen months. On May 4, 2016, this court issued an order taking this matter out of abatement and setting it for trial in August 2016.

On July 27, 2016, this court issued a Trial Scheduling Order. In this order, the court noted that the present case involved twenty-seven client matters and fifty-seven counts, and ordered that this matter be heard in phases. Phase one would involve the trial of case Nos. 12-O-15516 and 12-O-15734. These two cases comprised Counts Nine through Fourteen of the Second NDC. Upon concluding the culpability stage of phase one, the court would make a tentative finding regarding culpability. If the court found culpability, the court would proceed to the discipline stage of trial. If, on the other hand, no culpability was found, then the matter would continue to phase two.

On August 11, 2016, Respondent filed a motion to disqualify the undersigned judge. The motion to disqualify also included a motion to continue the trial. The Supervising Judge of the State Bar Court Hearing Department heard the disqualification motion and, on August 16, 2016, issued an order denying the motion.

On August 18, 2016, this court issued an order denying Respondent's motion to continue the trial. On August 22, 2016, Respondent filed a petition for interlocutory review. On August 25, 2016, the Review Department issued an order denying that petition.

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[2] Respondent's federal matter involved a civil enforcement action brought by the Consumer Protection Financial Bureau against Respondent and Abraham Michael Pessar. The civil complaint alleged that the parties engaged in improper mortgage relief services, as well as unfair and deceptive practices.

Trial in this matter commenced on August 26, 2016. Senior Trial Counsel Kevin Bucher and Eli D. Morgenstern represented the OCTC. Respondent represented himself. Following a tentative finding of culpability and closing arguments, phase one was submitted for decision on August 31, 2016. The parties were also permitted to submit written closing briefs, which were filed on September 19 and 20, 2016.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 7, 1998, and has been a member of the State Bar of California at all times since that date.[3] Respondent has never been licensed as an attorney in any other state.

Legislative History Regarding Loan Modification Regulation in California[4]

In 2009, state laws were enacted to protect homeowners facing foreclosures. California legislators sought to curb abuses by "a cottage industry that has sprung up to exploit borrowers who are having trouble affording their mortgages, and are facing default, and possible foreclosure, if they are unable to negotiate a loan modification or any other form of mortgage loan forbearance with their lender." (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, pp. 6-7.)

On October 11, 2009, Senate Bill No. 94 (SB 94) became effective, providing two safeguards for borrowers who employ the services of someone to help with a loan modification: (1) a requirement for a separate notice to borrowers that it is not necessary to use a third party to negotiate a loan modification (codified as Civ. Code § 2944.6); and (2) a proscription against charging pre-performance compensation, i.e., restricting the collection of fees until all loan

[3] On November 19, 2012, Respondent was enrolled involuntarily inactive. He has remained on inactive status since that date.

[4] The following description of California Senate Bill number 94 is taken from the Review Department's opinion in *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 225-226.

modification services are completed (codified as Civ. Code § 2944.7).[5] The new legislation was designed to "prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant." (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, p. 7.) A violation of either Civil Code provision constitutes a misdemeanor (Civ. Code §§ 2944.6, subd. (c); 2944.7, subd. (b)), and is cause for imposing attorney discipline. (§ 6106.3.)

Case Nos. 12-O-15516 and 12-O-15734

Facts

Introduction

Between 2009 and 2012, Respondent and non-attorney Abraham Michael Pessar (Pessar) partnered to create a loan modification operation (operation). The operation began solely in California, but soon grew nationwide. The operation ultimately signed up approximately 2,300 clients and brought in approximately $11.4 million. Besieged by complaints regarding advanced loan modification fees and failing to perform the promised services, the operation was ultimately shut down by a temporary restraining order obtained by the Consumer Protection Financial Bureau in July 2012.

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[5] The relevant portion of Civil Code section 2944.7 reads:

(a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

The Beginning

In 2009, Respondent and Pessar agreed to start the operation.[6] The operation went by many names, including but not limited to, the Gordon Law Firm, Gordon and Associates, National Legal Source, Resource Law Center, Resource Law Group, and Resource Legal Group. Initially, in late 2009, the operation sent direct mail marketing material solely to California homeowners. By early 2010, the operation started to send mailers nationwide to distressed homeowners.

Respondent and Pessar occupied several suites in a Los Angeles office building, and conducted the operation from that location. The operation consisted of a front-end sales side and a back-end processing side. The front-end sales side was a commission-based sales force tasked with selling loan modification services to distressed homeowners for between $2,500 and $4,500 per property. The back-end processors were responsible for providing the loan modification services to the customers. At one point, the operation employed approximately 20 non-attorney processors.

In addition to sharing office space, both Respondent and Pessar used John Gearries as an office manager. Respondent and Pessar also shared some of the same telephone and fax numbers.

As the sole attorney for the operation, Respondent prepared, approved, and signed the fee agreements executed by many of the operation's customers. He was also responsible for ensuring the operation complied with the law.

Pessar, on the other hand, was responsible for marketing the operation and managing the day-to-day sales and processing activities. Although Pessar oversaw these functions,

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[6] Non-attorney Jason Sandeman was also initially involved, but left the operation during the first quarter of 2010.

Respondent retained final decision-making authority over marketing and provided guidance to the sales and processing departments. Pessar also supervised all banking related issues for the operation.

Respondent and Pessar shared the client fee revenue generated by the operation. In or about 2010, Respondent and Pessar agreed to allocate one-third of the customers' fees to Respondent and the remaining two-thirds were used to pay marketing expenses, sales force commissions, and Pessar's share of the proceeds.

All told, the operation collected advanced fees from approximately 2,300 clients nationwide. Between January 2010 and July 2012, the operation received $11,403,338.63, primarily from clients and referrals of potential clients to other law firms.

Circumventing SB 94

The operation offered consumers assistance in negotiating and obtaining loan modifications and preventing or delaying foreclosure. Its sales force told consumers, orally and in writing, that the operation would help them obtain loan modifications. For about two months in 2009, the operation's attorney/client fee agreement stated that an attorney would attempt to negotiate with the client's lender to modify their mortgage.

Following the passage of SB 94 in October 2009, Respondent created what he called the "Pre-Litigation Monetary Claims Program" (PMCP). PMCP was designed to work around the prohibition against the collection of advanced fees for loan modification services. Under PMCP, the operation continued to operate in the same manner, except that customers would sign a "pro bono" agreement for the loan modification services sold by the operation. Accordingly, Respondent revised the operation's attorney/client fee agreement and ultimately created a pro bono attorney/client agreement. This pro bono agreement included substantially the same services that were listed in the operation's original attorney/client fee agreement. Contrary to the

definition of "pro bono," Respondent's pro bono loan modification services were only available to clients that paid for the PMCP.

At some point after April 2011, Respondent revised his attorney/client fee agreement to describe the scope of the attorney's services. In this agreement, Respondent stated that the operation would provide clients with "custom legal products," including a draft demand letter; a qualified written request; and a draft complaint. These "custom legal products" were fill-in-the-blank template documents created by Respondent and filled in by his back-end processors.

Although Respondent claimed to be selling "custom legal products," these documents were typically not used by the clients or processors to obtain loan modifications. Usually, the "custom legal products" were prepared after the loan modification package was already submitted. Despite Respondent's efforts to circumvent SB 94, the operation remained in the business of selling loan modification services, as was reflected in their marketing and telephone scripts.

Emboldened by his assertion that the operation was now purportedly selling "custom legal products" rather than loan modification services, Respondent took the position that he could sell his "custom legal products" in other states even though he was only licensed in California. He therefore began marketing the operation's services nationwide.

The Nationwide Sales Campaign

The operation's nationwide marketing campaign included mail solicitations, internet advertising, and cold calls made by the operation's sales force. Respondent's nationwide marketing sought to gain consumers' confidence by suggesting that the operation was affiliated with various government entities, such as the U.S. Department of Housing and Urban Development (HUD) or the Making Homes Affordable Programs (HAMP/HARP).

None of Respondent's business entities were associated with any governmental agencies and neither Respondent nor any of his business entities was certified by the U.S. Government to provide mortgage assistance relief services to consumers. Despite this fact, the operation's nationwide mail solicitations contained misleading language and images, including falsely listing a Washington, D.C. return address; stating in large font "NOTICE OF HUD RIGHTS;" and prominently displaying HUD and Making Home Affordable Program logos.

Some of the consumers who received the operation's mailers believed they were sent by a government agency. These consumers would call the operation with questions such as, "Is this HUD?" or "What company is this?" The operation's sales force was provided scripted answers for such questions. In one script, the sales representative was to state, "Under HUD you have rights as homeowners. During this conversation I would like to go over those rights with you." (Exh. 36, p. 70.) In another one of the scripts used by the operation, the sales representative began the conversation by stating, "The reason for the call is that we have you on President Obama's Stimulus List." (Exh. 26, p. 117.)

The operation's sales force would entice potential customers by promising substantial reductions in their mortgage payments and interest rates. One of the operation's sales scripts instructed the sales representatives to ensure that the potential clients were aware of how much they would save each month by asking, "Aren't you excited about saving $____ a month on your mortgage?" (Exh. 26, p. 144.) The sales representatives would also laud the operation's high success rate at obtaining loan modifications and would create a false sense of urgency by telling potential customers that they only have 72 hours to decide whether to purchase the operation's services.

It was up to the sales representatives to determine whether customers were "qualified."[7] Despite this fact, one of the sales scripts used by the operation instructed the sales representatives to tell potential customers that the law firm "got back to me within the hour and said you were qualified under federal guidelines." (Exh. 26, p. 182.) The sales representative would then add, "This was great news for your case because law firms in such a scrutinized industry will only take on cases they feel ... 100% confident on." (Exh. 26, p. 182.)

The Operation's Websites

As time went by, the Better Business Bureau began receiving more and more complaints from clients against the Gordon Law Firm. The majority of these complaints alleged a failure to provide services as promised.

To stay one step ahead of the negative Better Business Bureau ratings, the operation began repeatedly changing its name and websites. Although Respondent prepared and approved the content of each of the websites, he did not identify himself as the State Bar member responsible for the solicitations. Despite their different names, the operation's websites contained identical content, including using the same client testimonials.

The operation's websites told consumers that the law firm would perform a detailed analysis to gain an advantage in their loan modification negotiations with lenders. For example, under the "What We Do" and "Pre-Litigation Research & Investigation Program" headings on the Resource Law Center website, it is stated:

> In recent times Attorney's [sic] and homeowners have discovered simply asking mortgage lenders for assistance is not an effective way to achieve the results needed in loan modification. The Pre-Litigation Research & Investigation Program will provide homeowners with a prepared, detailed legal documents [sic] of illegal conduct engaged in by their particular lender. The illegal conduct could

[7] The operation had some qualification parameters in place. However, when the operation began selling "custom legal products," Respondent encouraged the sales force to qualify all potential clients.

have been performed during the time when the loan was originated or during the foreclosure. **An attorney** will create a legal memorandum focusing on these claims and judgments and utilize them to construct a lawsuit against your lender. The prepared lawsuit will be utilized as an instrument of leverage to improve the outcome of negotiating with a mortgage lender.
(Exh. 36, p. 168, emphasis added.)

The website further stated:

Resource Law Center does not know whether or not there are violations in your mortgage loan. Finding those violations are the entire reason for the Pre-Litigation Research & Investigation Program. Although, in the past, **attorneys** have found that 90% of the loans they audit within the past 10 years come back with multiple lending violations including RESPA and TILA.
(Exh. 36, p. 168, emphasis added.)

Under Step 1 File Analysis, the website provided "Attorney combines both the analysis of your legal claims in the form of a demand letter and opinion memorandum." (Exh. 36, p. 168, emphasis added.)

Respondent and Gearries developed and reviewed the content for the Resource Law Center website as well as the websites for the other entities under which the operation conducted its business. Other websites developed by Respondent and Gearries which made the same or similar representations included nationallegalsource.com, thereliefnetwork.org, resourcelegalgroup.com, prelitlaw.com, and resourcelawcenter.com.

These assertions would also be reinforced by the sales representatives' scripts, which included statements such as, "the lawyers are going to want to find weakness in your file and do a forensic investigation on your file." Despites these representations, clients who paid for the services would later be told that the operation does not provide forensic audits.

The operation's websites also included a reference to "myhud.org" and an official looking seal. Although it sounded like an official government website, "myhud.org" was actually owned and operated by Respondent.

Sales Force Paid on Commission from Advanced Fees

The operation's nationwide marketing campaign was successful in attracting distressed homeowners living throughout the country. The operation's sales force was paid on a commission basis, with the most successful sales representatives earning over $200,000 a year. Under the commission structure, a sales representative made an increasingly larger percentage of commission based on the price of the services sold to clients. For instance, a sales representative that sold the operation's services for $999.99 would receive a 10% commission. If that representative sold the same services for $3,000, they would receive a 30% commission. Consequently, the sales force was incentivized to sign up as many customers as possible, at the highest rate possible. Other sales incentives included expensive dinners and cash incentives at closing for the highest sellers.

If sales representative collected the entire fee upfront, they received an added bonus. The sales representatives told the clients that they needed to pay before the operation would begin working on their loan modification. The representatives also warned clients that a failure to make a payment would cause the operation to put their account on hold.

To help secure payments, sales representatives would advise clients that if they were current on their mortgage payments, they would be unable to demonstrate sufficient hardship to justify a modification. When clients couldn't pay both their loan modification fees and their mortgage, the representatives would tell them to pay their loan modification fees.

Failure to Perform as Promised and Failure to Refund Advanced Fees

After receiving clients' payments, the operation's processors often failed to return phone calls and unilaterally closed clients' files without providing any services of benefit to them. In most cases, the operation did not obtain the promised mortgage modifications or forensic audits. Often, the processors did not even contact or attempt to negotiate with the clients' lenders. Often

clients complained that the sales agents were non-responsive or that they did not obtain the favorable loan modification terms promised; yet, nonetheless, the client's file was "closed," ending Respondent's involvement.

The actions and advice of the operation caused clients to stop communicating with their lenders and divert funds to the operation that would have otherwise gone to their mortgages. As a result, many of the operation's clients were pushed to the brink of foreclosure. Only a small percentage of clients received any mortgage modifications or forbearance, and a significant portion of those did not receive the terms promised by the operation.

Although the operation accepted illegal advanced fees for loan modification services, many of the clients did not receive refunds. Clients that filed complaints with the State Bar of California, however, were more likely to receive refunds.

Respondent directed processors and sales representatives to send complaining clients a "Notice of Client's Right to Arbitrate." Along with that notice Respondent instructed the processors to attach a draft complaint naming the complaining client as and the defendant and Respondent as the plaintiff. Specifically, on February 1, 2012, Respondent sent an internal email to Gearries and others entitled, "Form Lawsuit Against Complaining Client." In that email, Respondent wrote:

> Guys,
> All you have to do is send a "Notice of Client's Right to Arbitrate" as well as the attached form lawsuit with their name on it. Let them know that if they reject arbitration and got [sic] to the State Bar with a bogus complaint, they will be sued. We probably should tweak the letter that accompanies the "Notice of Client's Right to Arbitrate".
> Chance
> (Exh. 37, p. 96.)

Attached to this email was a draft complaint to be filed in the Los Angeles County Superior Court. The draft complaint listed Respondent and his law firm as the plaintiff and contained a space for the defendant that stated, "INPUT COMPLAINING CLIENT NAME."

(Exh. 37, p. 97.) In this draft complaint, it's alleged that "[c]ertain distressed homeowners simply wish to force their attorney to return a fee that the attorney undoubtedly earned." (Exh. 37, p. 97.) The draft complaint states that Respondent completed all work required of him under the retainer agreement and has therefore earned the entire fee. The draft complaint goes on to allege that the client is engaging in extortion and is obligated to arbitrate the dispute.

This draft complaint was sent to several clients who complained about Respondent's loan modification services to the California State Bar.

Conclusions

Count Nine – Section 6106 [Moral Turpitude]

Section 6106 provides that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The OCTC alleged, among other things, that Respondent committed moral turpitude by falsely representing to potential clients that his loan modification services would be performed by licensed attorneys. The court agrees.

Respondent's marketing and sales repeatedly played the "lawyer card" and indicated that attorneys would be working on the clients' behalf. Yet, when it came time to perform these services, Respondent delegated the processing side of the operation to non-attorneys. Respondent argues that he was entitled to have non-attorneys processes his clients' cases because the loan modification work they were performing was not "legal work." Even if the court were to agree with this assertion – which it does not – this does not change the fact that Respondent falsely represented in his marketing to potential clients that attorneys would be working on their behalf. These false representations constitute moral turpitude and dishonesty, in willful violation of section 6106.

Count Ten – Rule 1-310 [Forming a Partnership with a Non-Lawyer]

Rule 1-310 provides that an attorney must not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. Respondent willfully violated rule 1-310 by entering into a partnership consisting of the practice of law with Pessar, wherein the parties commingled finances, used common facilities, shared employees and physical resources, and acted with a common purpose of obtaining advanced attorney fees for loan modification services.

Count Eleven – Rule 1-320(A) [Sharing Legal Fees with a Non-Lawyer]

Rule 1-320(A) provides, with limited exceptions, that an attorney must not directly or indirectly share legal fees with a non-lawyer. By sharing advanced attorney fees from clients for loan modifications with Pessar, Respondent shared a legal fee with a person who is not a lawyer, in willful violation of rule 1-320(A).

Count Twelve – Rule 1-320(A) [Sharing Legal Fees with a Non-Lawyer]

By sharing paying sales representative commissions based on the cost of the advanced attorney fees collected from clients for loan modifications, Respondent shared legal fees with persons who are not lawyers, in willful violation of rule 1-320(A).

Count Thirteen – Rule 1-400(D)(2) [False Advertising]

Rule 1-400(D)(2) provides that attorney communications or solicitations shall not contain any matter or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public. By operating numerous websites with different business names, using the same client testimonial interchangeably on different websites, and failing to identify himself as the State Bar member responsible for the communication or solicitation on several websites, Respondent engaged in attorney

communications or solicitations which contained a matter which is false, deceptive, and tends to confuse, deceive, and mislead the public, in willful violation of rule 1-400(D)(2).

Count Fourteen – Section 6068, Subdivision (a) [Duty to Support All Laws]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. The OCTC alleged that Respondent failed to support California and federal law by accepting advanced attorney fees for residential mortgage loan modification services in violation of: (1) section 6106.3; and (2) the Federal Trade Commission's Mortgage Assistance Relief Services Rule, 16 C.F.R. Part 322, recodified as 12 C.F.R. Part 1015 (the MARS Rule).

The court first considers the allegation that Respondent violated section 6106.3. Section 6106.3 provides that an attorney must not engage in any conduct in violation of sections 2944.6[8] or 2944.7 of the Civil Code. As noted above, Civil Code section 2944.7 provides, in pertinent part, that notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

By accepting advanced attorney fees for residential loan modification services in willful violation of Civil Code section 2944.7 and section 6106.3, Respondent failed to support the laws of this state, in willful violation of section 6068, subdivision (a).

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[8] The conduct alleged in Count Fourteen does not constitute a violation of Civil Code section 2944.6.

Next, the court turns to the alleged violation of the MARS rule. The OCTC alleged that Respondent's conduct violated the MARS rule by collecting advanced fees for residential mortgage loan modification services for out-of-state clients prior to providing those clients with a written modification offer from the clients' lenders that the clients decided was acceptable.

The MARS Rule is a voluminous set of 11 rules ranging from 16 CFR 322.1 to 16 CFR 322.11, recodified as 12 CFR 1015.1 to 12 CFR 1015.11. The NDC, however, does not specifically identify which rule or rules were violated.

Rule 5.41(B) of the Rules of Procedure of the State Bar of California states, in part, that the notice of disciplinary charges shall: (1) cite the statutes, rules, or Court orders that the member allegedly violated; and (2) contain facts, in concise and ordinary language, comprising the violations in sufficient detail to permit the preparation of a defense. The present blanket allegation that Respondent violated "the MARS rule" does not comply with rule 5.41(B), in that it does not specifically or adequately cite the rule or rules Respondent allegedly failed to support. Accordingly, the court does not find Respondent culpable of violating the MARS Rule, as charged in Count Fourteen.

Aggravation[9]

Multiple Acts of Wrongdoing (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute an aggravating factor.

Overreaching (Std. 1.5(g).)

Respondent's procedures for dealing with complaining clients constitute overreaching. Sending his clients draft complaints – written up with the client's name as the defendant – was clearly intended to intimidate or scare his clients into dropping their complaints or, at the very

[9] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

least, agreeing to arbitration. This overreaching response to complaining clients reflects Respondent's abandonment of the fiduciary duties owed to his clients, and constitutes a significant factor in aggravation.

Indifference/Lack of Remorse (Std. 1.5(k).)

Between 2010 and 2012, various North Carolina, Pennsylvania, Wisconsin and Washington state agencies requested and/or ordered Respondent to cease and desist from collecting an advance fee for the illegal loan modification services Respondent provided their consumers. State agencies in Connecticut and Washington also warned Respondent that the loan modification services he provided in their respective states constituted the unauthorized practice of law (UPL). Notwithstanding the cease and desist orders and the UPL warnings, Respondent continued to operate his nationwide operation by charging and collecting advance fees from distressed homeowners until a temporary restraining order terminated his operation in July 2012.

Lack of Cooperation (Std. 1.5(l).)

Respondent not only failed to cooperate with the OCTC, but, on numerous occasions during the pendency of the OCTC investigation and disciplinary proceedings, he made veiled (and in some instances more direct) threats against the OCTC prosecutor and investigator. Respondent's threats caused them to fear for their safety and the safety of their family members such that on May 17, 2013, the Los Angeles Superior Court issued a Temporary Restraining Order against Respondent which limited his access to the OCTC offices, Respondent's contact with the OCTC prosecutor, and the prosecutor's minor children.

Between 2012 and 2013, Respondent sent several threatening or inappropriate emails to OCTC employees. Specifically, Respondent sent an email to OCTC prosecutor Erin Joyce (Joyce) indicating that he knew where she and OCTC investigator Craig von Freymann (von Freymann) live. He then sent the following email to Joyce on May 9, 2013:

I want you to know one thing in no uncertain terms Erin...I will find out what is most sacred to you in the world...and I will destroy it...just like you have done to me...and I am going to do the same to every single person that is behind what has been done to me. You may think what I'm saying is just words...but it's not...what I'm telling you will be accomplished and fulfilled...I promise you... and I put that promise on the lives of my children. Chance E. Gordon
(Exh. 61, p. 17.)

In addition, Respondent issued repeated challenges to fight von Freymann. In a December 20, 2012, Respondent sent an email to Joyce and von Freymann stating, in part:

Craig, you have until the end of the year to agree to a time and place for us to have our three round match. 8 ounce gloves. Three two minute rounds. Let's just get it over with Craig. You illegally destroyed my business and screwed up my life. You can't just think I'm going to let it go, are [sic] you? Once we are done with the bout, they [sic] I'm done with the issues I have with you. Let's just get it done.
(Exh. 61, p. 25.)

In another email, sent to von Freymann on November 19, 2012, Respondent wrote, in part:

Corrupt investigator...corrupt prosecutor...a Kangaroo court...what a joke. The funny thing is that you people think that you will "close the book" on me and never have to answer for what you have done and what you are doing to me. But your [sic] smarter than that, aren't you Craig? Hated enemies know each other better than best friends...and you know that I will pursue you and your agency until I get my "pound of flesh"...whether I am an inactive attorney, disbarred attorney, whatever...right Craig?
(Exh. 61, p. 27.)

In another email, sent to Joyce on January 24, 2013, Respondent wrote, in part:

You idiots can stick your noses in the air all you want, but the worse you can do is have me disbarred...and once you do that, it will not be the end but rather the beginning of you and everyone else involved having to deal with the monumental unprecedented payback that will be enacted upon all of you and that will pale in comparison to what you have done to me.

Count on it. Go adopt another cat to calm yourself if you need to. Watch it happen...because it will.
(Exh. 61, p. 31.)

And in yet another email, sent to Joyce on April 2, 2013, Respondent wrote, in part:

> God, how on Earth does you or anyone in your agency involved in my case believe that they are going to avoid serious backlash from all this?! 42 years old does not make me an old man…I've got the rest of my life to get my revenge. :)
> (Exh. 61, p. 35.)

Respondent's emails did not appear to be empty threats considering his postings on his Facebook page. There he compared his situation to that of former LAPD officer Christopher Dorner – who committed a series of murders in 2013 – and wrote: "Transparency needs to be woven into all of these agencies. If this doesn't happen, no one should be surprised if blood is shed in the future." (Exh. 61, p. 38.) Also on Facebook, Respondent posted a picture of himself peering out a window with a rifle in his hand. This picture was posted on July 17, 2012, right after the Consumer Protection Financial Bureau filed its action against Respondent.

Respondent's threatening behavior toward State Bar employees was reprehensible and constitutes extremely serious aggravation.

Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent's violation of the loan modification law significantly harmed his clients by improperly depriving them of precious funds while they faced foreclosure. The financial harm Respondent caused his clients warrants some consideration in aggravation.

Mitigation

It is Respondent's burden to establish mitigating circumstances by clear and convincing evidence. (Std. 1.6.) Respondent did not offer any evidence of mitigation; however, the court notes that he engaged in discipline-free practice for approximately 11 years prior to the charged misconduct. A long record without discipline is *most* relevant when the misconduct is aberrational. (Std. 1.6(a) [mitigation for no prior record of discipline over many years coupled with present misconduct that is not likely to recur]; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where

misconduct is aberrational].) Based on Respondent's lack of recognition and insight into his own misconduct, the court concludes that it is not aberrational, and is likely to recur. Accordingly, his lack of a prior record of discipline warrants nominal weight in mitigation.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed. However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record

demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, or corruption. Standard 2.8 instructs that actual suspension is the presumed sanction when a member shares legal fees with a non-lawyer. And standard 2.18 provides that disbarment or actual suspension is appropriate discipline for a violation of Business and Professions Code section 6106.3

Respondent argues that the OCTC has not met its burden of proving by clear and convincing evidence that he is culpable of any misconduct. The court finds that Respondent's arguments lack merit. The OCTC, on the other hand, urges disbarment and cites *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296, in support of its recommendation.

In *Huang*, the attorney failed to supervise non-lawyers in a high-volume loan modification practice that the attorney attempted to run with little to no personal involvement. After nearly two years, the attorney realized that he had lost control of the practice and took steps to try to shut it down, including going to the district attorney's office. In eight client matters, the attorney was found culpable of violating loan modification laws, failing to competently perform, and aiding and abetting the unauthorized practice of law. In addition, he failed to promptly return client files and timely pay out funds in two matters. In aggravation, the attorney committed multiple acts of misconduct and caused significant client harm. In mitigation, the attorney displayed remorse, cooperated with the State Bar, demonstrated good character, and had no prior record of discipline. The Review Department recommended, among other things, that the attorney be suspended for a minimum of two years and until he makes restitution and complies with standard 1.2(c)(1).

While the present case and *Huang* share some similarities, they are distinctly set apart by

what transpired after the OCTC became involved. In *Huang*, the attorney realized that he had lost control and, despite the inevitable ramifications, he blew the whistle on his own operation. The attorney in *Huang* went on to exhibit remorse in the State Bar proceedings and cooperated with the OCTC. Respondent, on the other hand, took a completely different route. In the face of overwhelming evidence to the contrary, he steadfastly contends that his loan modification operation was not practicing law and that all the charges against him should be dismissed. Further, he has repeatedly threatened his former clients and OCTC employees with lawsuits and potential violence. Such conduct is completely unacceptable and clearly demonstrates a high likelihood of recidivism and a considerable threat to the public. Accordingly, this court cannot justify recommending any level of discipline short of disbarment.

Therefore, having considered the misconduct, the aggravating circumstances, as well as the case law and the standards, this court concludes that a disbarment recommendation is necessary to adequately protect the public and preserve the integrity of the legal profession.

Recommendations

This court recommends that respondent Chance Edward Gordon be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys admitted to practice in this state.[10]

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a)

[10] While Respondent likely still owes restitution to some of his clients, the present matter focused on the general scope of Respondent's operation rather than on individual client matters. Accordingly, the court lacks the clear and convincing evidence necessary to support a recommendation that he make restitution.

and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.[11]

Costs

This court also recommends that costs be awarded to the OCTC in accordance with section 6086.10 and that such costs be enforceable as provided in section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Chance Edward Gordon,** Member No. 198512, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)[12] Respondent's inactive enrollment will terminate upon (1) the effective date of the Supreme Court's order imposing discipline; (2) as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure; or (3) as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: November 21, 2016

YVETTE D. ROLAND
Judge of the State Bar Court

[11] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1998) 44 Cal.3d 337, 341.)

[12] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 22, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

CHANCE E. GORDON
515 E GRANT RD
STE 141-277
TUCSON, AZ 85705 - 5797

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 22, 2016.

Angela Carpenter
Case Administrator
State Bar Court